

September 11, 2009

***Via Electronic Filing***

Ms. Marlene H. Dortch, Commission Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W., Suite TW-A325  
Washington, DC 20554

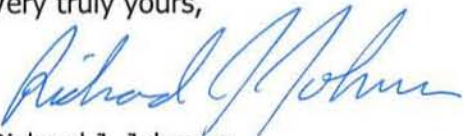
Re: In the matter of Comments on the Petition of United States Telecom Association for  
Waiver from Application of Equal Access Scripting Requirements  
DA 09-1816 / WC Docket No. 08-225

Dear Ms. Dortch:

Attached and filed electronically are the Comments of the Minnesota Independent Coalition in Support of the Petition of United States Telecom Association for Waiver from Application of Equal Access Scripting Requirements in the above-entitled docket. In addition, attached is an Affidavit of Service.

Please contact me if further information is needed.

Very truly yours,



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Attachment  
RJJ/keb

cc: M. Cecilia Ray, Esq.  
Thomas R. Farm / MIC  
Genie Barton / USTA  
Competition Policy Division  
Best Copy and Printing, Inc.

***Via E-Mail***  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Comments on the Petition of United States Telecom Association for Waiver From Application of Equal Access Scripting Requirements</b>	)	<b>WC Docket No. 08-225</b>

**COMMENTS OF THE MINNESOTA INDEPENDENT COALITION IN SUPPORT OF  
THE PETITION OF UNITED STATES TELECOM ASSOCIATION FOR WAIVER  
FROM APPLICATION OF EQUAL ACCESS SCRIPTING REQUIREMENTS**

The Minnesota Independent Coalition (“MIC”)<sup>1</sup> submits the following Comments in response to the Federal Communications Commission’s (“Commission”) August 14, 2009, Public Notice.<sup>2</sup> The MIC supports the Petition of the United States Telecom Association (“USTA”) requesting a waiver from application of equal access (“EA”) scripting requirements (the “USTA Petition”). The MIC further encourages the Commission to forbear from application of EA scripting requirements to all small and mid-sized Incumbent Local Exchange Carriers (“ILECs”).

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<sup>1</sup> The MIC is an unincorporated association of over seventy-five small, Incumbent Local Exchange Carriers (“ILECs”) providing local exchange service to primarily rural areas in Minnesota. MIC members are responsible for providing telecommunications service to customers throughout 50% of Minnesota’s land mass, including service to over 250 small communities and their surrounding rural areas. MIC members average approximately 4,800 access lines, although half of the MIC members have fewer than 1,800 access lines. The average number of access lines per MIC member exchange is approximately 1,100 with half serving fewer than 600 access lines. Some members of MIC are also members of USTA.

<sup>2</sup> *Pleading Cycle Established for Petition of the United States Telecom Association for Waiver From Application of the Equal Access Scripting Requirements*, DA 09-1816, released August 14, 2009.

## **1. Summary.**

The MIC concurs with USTA that prior justifications for the EA scripting requirement are gone, and its continued application to small and mid-sized ILECs is far more likely to confuse and annoy their customers than to educate or assist them. The prevalence of bundled communication services and the highly competitive market for consumers' long distance calls demonstrate that the public interest is not served by a continuation of the EA scripting requirement, and the Commission should grant the waiver requested by USTA. Further, the same factors support forbearance by the Commission from application of the EA scripting requirement to all small and mid-sized ILECs. The concept of a market for consumers' "long distance calls" no longer applies to small and mid-sized ILECs, since many of their competitors (such as wireless carriers, cable service providers and VoIP service providers) are not limited by local exchanges boundaries in establishing calling plans.

## **2. The EA Scripting Requirement Is An Outdated And Counterproductive Legacy Of Market Conditions That No Longer Exist.**

As noted in the USTA Petition, the EA scripting requirement is a legacy of the Modified Final Judgment and resulting regulations that extended the EA scripting requirements to other ILECs.<sup>3</sup> These requirements were also contained in section 251(g) of the Telecommunications Act of 1996.

The Commission has described the EA scripting requirement as "designed to foster fair competition in the provision of stand-alone long distance service at a time when competition in the provision of stand-alone long distance services was nascent, and there was little, if any,

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<sup>3</sup> USTA Petition at 5.

competition in the provision of local exchange service.”<sup>4</sup> The Commission relieved AT&T, Verizon, Qwest, and their ILEC affiliates of the EA scripting requirements in 2007.<sup>5</sup> The Commission noted that “market conditions have changed substantially, greatly reducing the benefits of the EA Scripting Requirements,”<sup>6</sup> and cited to a number of factors supporting that decision:

- There is “significant evidence” that stand-alone long distance service has become a “fringe market,” with consumers increasingly shifting to bundled service offerings.<sup>7</sup>
- The “minority of consumers that still take stand-alone long distance service” have additional options for making long distance calls, such as wireless service, prepaid calling cards, and the EA scripting requirements’ “artificially narrow focus” on alternative presubscribed wireline long distance providers “may, in fact, confuse or mislead consumers and cause them not to investigate alternative means of making long distance calls.”<sup>8</sup>
- “[C]ompetition for stand-alone long distance services would function better absent the potential marketplace-distorting effects of the current EA scripting requirement.”<sup>9</sup>

In the two years since that Order, it has become all the more clear that these factors describe the competitive marketplace faced by all ILECs, including small and mid-sized ILECs.

### **3. The USTA Petition Demonstrates That Small And Mid-Sized ILECs Experience Substantial Competition For Consumers’ Long Distance Business.**

The USTA Petition thoroughly documents the highly competitive long distance market faced by small and mid-sized ILECs.<sup>10</sup> As USTA notes, the “long distance market was largely

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<sup>4</sup> *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations of In-Region, Interexchange Services*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd. 16440 (*Equal Access Scripting Memorandum Opinion and Order*) at ¶ 120.

<sup>5</sup> *Equal Access Scripting Memorandum Opinion and Order* at ¶¶ 3, 117-126.

<sup>6</sup> *Id.* at ¶ 120.

<sup>7</sup> *Id.* at ¶ 121.

<sup>8</sup> *Id.* at ¶ 122.

<sup>9</sup> *Id.*

<sup>10</sup> USTA Petition at 10-20.

subsumed in the ‘all distance’ market and other competitive alternatives” offered by intermodal competitors offering wireless, cable, VoIP, calling card and dial-around services.<sup>11</sup> There has been tremendous growth in both: (1) the availability of cable, wireless and VoIP services in offering alternatives to long distance calling; and (2) consumers’ choice to use these alternatives instead of traditional wireline long distance service. USTA notes that “approximately 44.5 percent of customers are primarily using these alternatives to traditional wireline long distance services for their long distance calling as part of an “all-distance” package.”<sup>12</sup>

The same is true of customers in service territories of MIC member companies. Customers in the service territories of MIC member companies have many different options for long distance service, ensuring a highly competitive market for their business. In Minnesota, there are approximately 320 companies authorized to provide long distance service.<sup>13</sup> There are also many wireless, cable and VoIP service providers operating in the service territories of the MIC member companies and offering alternatives to stand-alone wireline long distance service. Many of the MIC member companies have experienced the decline in access minutes and revenues that are described in the USTA Petition and reflected in filings by the National Exchange Carrier Association (NECA).<sup>14</sup>

USTA also demonstrates the large amounts spent by competitive providers of communication services (including alternatives to long distance) to ensure that consumers are aware of their service offerings.<sup>15</sup> As USTA notes, it is “highly likely that most consumers are

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<sup>11</sup> *Id.* at 11.

<sup>12</sup> *Id.* at 26.

<sup>13</sup> <https://www.edockets.state.mn.us/eAssessment-public/company/searchServiceProvider.action?serviceType=1&sortChar=1&cityOrTship=1>

<sup>14</sup> USTA Petition at 21.

<sup>15</sup> *Id.* at 18-19.

aware of the many competitive offerings that provide substitutes for long distance calling.”<sup>16</sup>

Further, compliance with the EA scripting requirements by small and mid-sized ILECs would not serve to make consumers aware of these competitive offerings.

**4. The Commission Should Grant Forbearance From The Scripting Requirements For All Small And Mid-Sized ILECs.**

It is also appropriate for the Commission to grant forbearance from these EA scripting requirements for *all* small and mid-sized ILECs. To satisfy the forbearance standards, a party must demonstrate that:

- (1) enforcement of the regulation is not necessary to ensure that “the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;”
- (2) enforcement of the regulation is not necessary to protect consumers; and
- (3) forbearance is “consistent with the public interest,” considering whether forbearance “will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.”<sup>17</sup>

These standards are fully satisfied and justify forbearance from continued application of the EA scripting requirements as to small and mid-sized ILECs.

- (a) The EA scripting requirements are not needed to ensure that the charges, practices, classifications or regulations of small and mid-sized ILECs are just and reasonable and are not unjustly or unreasonably discriminatory.**

The same factors demonstrated in the USTA Petition apply to all small and mid-sized ILECs. As USTA explains, the market for consumers’ long distance business is highly

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<sup>16</sup> *Id.* at 18.

<sup>17</sup> 47 U.S.C. § 160(a) and (b).

competitive and has excess capacity. This in turn exerts a “price discipline” that prevents small and mid-size ILECs from significantly raising their rates for long distance service.<sup>18</sup>

The USTA Petition also documents the drastic decline in access minutes and revenues experienced by small and mid-sized ILECs in recent years.<sup>19</sup> Small and mid-size ILECs simply do not have the ability to raise their long distance service rates without risking the loss of yet more customers in this competitive market. In addition, the extensive marketing campaigns of alternative service providers are likely to ensure that no customer will be trapped or misled into selecting an excessively priced, stand-alone wireline long distance service offering from a small or mid-size ILEC.

Consumers are protected by the continued application of the dialing parity obligations. As USTA notes, 47 U.S.C. § 251(b)(3) still requires small and mid-size ILECs to offer nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings, with no unreasonable dialing delays.<sup>20</sup>

Small and mid-size ILECs are also faced with discriminatory obligations in marketing their own long distance service offerings. As USTA notes, “[n]ow only traditional ILECs are forced to design and market their services inefficiently to meet [the EA scripting] outmoded regulatory requirement.”<sup>21</sup> This inefficient and discriminatory regulatory requirement is contrary to the Commission’s recognition that regulatory parity between all service providers is in the

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<sup>18</sup> USTA Petition at 28, 29.

<sup>19</sup> *Id.* at 20-22.

<sup>20</sup> *Id.* at 27, 30.

<sup>21</sup> *Id.* at 25, 27-28.

public interest and prevents distortions in the competitive marketplace and consequent consumer harm.<sup>22</sup>

**(b) Continued application of the EA scripting requirements to small and mid-size ILECs is unnecessary for the protection of consumers.**

As discussed above and as documented in the USTA Petition, consumers are well aware of service alternatives to traditional wireline long distance service, and are choosing those alternatives in growing numbers. In this context, it is more likely that being read a listing of only wireline, stand-alone long distance service providers “may, in fact, confuse or mislead consumers and cause them not to investigate alternative means of making long distance calls.”<sup>23</sup>

In granting relief to AT&T, Verizon, Qwest, and their ILEC affiliates, the Commission found that “competition for stand-alone long distance services would function better absent the potential marketplace-distorting effects of the current EA scripting requirement.”<sup>24</sup> This is no less true for small and mid-size ILECs.

There is no basis to assume that customers of small and mid-size ILECs are less well informed than the customers of AT&T, Verizon, Qwest, and their ILEC affiliates, or that the customers of small and mid-size ILECs still need to hear a scripted response when inquiring about available toll service providers. There is also no basis to remove this “protection” for customers of AT&T, Verizon and Qwest and their ILEC affiliates, while leaving it in place for the customers of small and mid-size ILECs.

There may also ultimately be harm to consumers in the increased costs small and mid-size ILECs incur to comply with EA scripting requirements. The USTA Petition describes the

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<sup>22</sup> See *id.* at 24-25, fns.87, 88.

<sup>23</sup> *Equal Access Scripting Memorandum Opinion and Order* at ¶ 122.

<sup>24</sup> *Id.*



staff time consumed by and efforts required of one of its members, Blackfoot Communications, in complying with the EA scripting requirements.<sup>25</sup> This may equate to higher prices for services, or less funds available for staffing to serve consumers, to offset against the costs of complying with the non-revenue producing regulatory requirement. The experience of Blackfoot Communications is one shared by all small and mid-size ILECs.

**(c) Forbearance from the EA scripting requirements for small and mid-size ILECs is consistent with the public interest.**

Forbearance from the EA scripting requirements for small and mid-size ILECs is consistent with the public interest because it will promote competitive market conditions and enhance competition among providers of telecommunications services. Forbearance would permit small and mid-size ILECs to market their services on the same basis afforded to:

(1) AT&T, Verizon, Qwest, and their ILEC affiliates; (2) CLECs; and (3) providers of service alternatives to traditional wireline long distance service.

As noted above, continued application of the EA scripting requirements to small and mid-sized ILECs provides no useful information to consumers, is likely to confuse consumers, and imposes discriminatory requirements on small and mid-sized ILECs. The EA scripting requirements are not appropriate in the current competitive marketplace, as the Commission recognized when it relieved AT&T, Verizon, Qwest, and their ILEC affiliates of those requirements in 2007. All of these same factors show that forbearance from the EA scripting requirements for small and mid-size ILECs is consistent with the public interest.

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<sup>25</sup> USTA Petition at 27-28.

**5. Conclusion.**

For the reasons described above, the MIC urges the Commission to: (1) grant the USTA Petition for waiver, and (2) forbear from application of the EA scripting requirements to small and mid-size ILECs.

Date: September 11, 2009

Respectfully submitted,

/s/ Richard J. Johnson

and

/s/ M. Cecilia Ray

Attorneys on Behalf of the Minnesota  
Independent Coalition

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# AFFIDAVIT OF ELECTRONIC SERVICE

STATE OF MINNESOTA ) In the Matter of Comments on the Petition of United States  
 ) ss Telecom Association for Waiver From Application of  
COUNTY OF HENNEPIN ) Equal Access Scripting Requirements

DA 09-1816 / WC Docket No. 08-225

Karen E. Berg, being first duly sworn on oath, deposes and states that on the 11th day of September, 2009, copies of the Comments of the Minnesota Independent Coalition in Support of the Petition of United States Telecom Association for Waiver from Application of Equal Access Scripting Requirements in the above-referenced matter were electronically filed to the persons listed below:

Marlene H. Dortch, Commission Secretary  
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Federal Communications Commission  
445 12<sup>th</sup> Street S.W., Suite TW – A325  
Washington, DC 20554

ECFS Website

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Wireline Competition Bureau  
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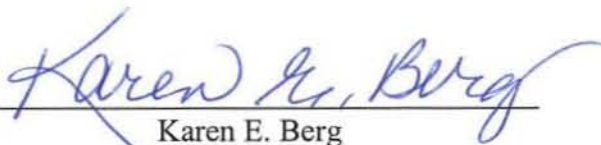
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Karen E. Berg

SWORN TO BEFORE ME this  
11th day of September, 2009.

  
NOTARY PUBLIC

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